

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Citizens Utility Board)	NSD File No. L-01-161
Petition for Expedited Permanent Waiver of)	CC Docket No. 96-98
47 CFR Section 52.19(c)(3)(ii))	

**REPLY OF THE PEOPLE OF THE STATE OF ILLINOIS
TO PETITION FOR EXPEDITED PERMANENT WAIVER
OF 47 CFR 52.19(c)(3)(ii) OF THE CITIZENS UTILITY BOARD**

The People of the State of Illinois, by James E. Ryan, Attorney General (“the People” or “Illinois AG”), respectfully submit to the Federal Communications Commission (“Commission”) their response to a Petition submitted by the Citizens Utility Board (“CUB”) requesting a permanent waiver of the requirement that consumers dial ten digits for every telephone call within and between all area codes in the geographic area covered by the 847 and 224 area codes in suburban Chicago, Illinois. Amended Citizens Utility Board Petition for Expedited Permanent Waiver of 47 CFR §52.19(c)(3)(ii), filed October 1, 2001. The People also respond to comments filed on December 28, 2001 by AT&T Wireless and the Cellular Telecommunications & Internet Association.

The People submit that granting a waiver from Rule 52.19(c)(3)(ii) will not impede or interfere with the pro-competitive goals the Commission cited as the reason for instituting the overlay dialing requirements in 1996. See Implementation of the Local Competition Provisions

of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 11 FCC Rcd 19392 (August 8, 1996) (“Second Report and Order”), para. 287. Lacking any real evidence that such a waiver would result in anti-competitive effects on the market, the Commission should not force consumers and businesses to bear the inconvenience and expense associated with this requirement. The Commission should also consider that there is no evidence to suggest that balancing the theoretical benefits of an 10-digit dialing pattern to competition against the actual economic costs to consumers and businesses tilts this issue in favor of 10-digit dialing. The requested waiver is additionally justified to prevent the 847 area from becoming an 10-digit dialing “island” with its own unique dialing pattern, which, because it is at odds with dialing patterns in the rest of metropolitan Chicago, will most certainly disadvantage and confuse customers dialing from 847 and 224. With no evidence before it to support the notion that a 7-digit dialing pattern within the 847 and 224 area codes would have any actual anti-competitive effect on the telecommunications market in that area and with no actual evidence to suggest that 10-digit dialing is necessary for any but theoretical reasons, the Commission should grant the requested permanent waiver.

ARGUMENT

1. AT&T Wireless (“AT&T”) and Cellular Telecommunications and Internet Association (“CTIA”) refer to the competitive harm that would threaten non-incumbent carriers should 10-digit dialing not be implemented. CTIA Comments at 2-3; AT&T at 5-6. Significantly, however, these parties fail to cite any evidence that any carrier has ever suffered any actual

competitive harm during the imposition of other 10-digit dialing waivers. Despite their protestations that 10-digit dialing is needed to protect competition where area code overlays have been imposed, AT&T and CTIA are unable to back up these assertions with anything other than conjecture. The Commission should rule on CUB's Petition on the basis of actual evidence, not speculation about what might happen if 7-digit dialing patterns were kept consistent with the rest of the Chicago area. The Commission should take note of the fact that the 224 overlay has actually been in effect in the 847 area since December 13, 2001 *without the 10-digit dialing requirement*, yet no carrier has come forth with evidence of having suffered any anti-competitive effects as a result of this waiver.

2. CTIA cites the Second Report and Order to assert that 10-digit dialing "alleviates confusion" because customers in the 847 and 224 area codes will be dialing the same number of digits for all calls. CTIA Comments at 2. This argument totally overlooks the fact that customers subject to the new dialing pattern will be dialing a *different* number of digits than the rest of metropolitan Chicago, a requirement that will be at least as confusing, if not more so, than the 7-digit intra-NPA dialing and 10-digit inter-NPA dialing pattern that now exists *in the rest of the metropolitan area*. Creating a dialing island would not only be more confusing, more importantly, it would create inequality within a group of customers. The Commission's prohibition against such treatment is well-established: numbering administration - - which the Second Circuit has concluded includes the establishment of local dialing patterns (see *People of the State of New York and Public Service Commission of the State of New York v. Federal*

Communications Commission, et. al., 267 F.3d 91, 102-106 (2nd Dist., September 28, 2001)

(“NYPSC Order”)) - - may not unduly favor or disadvantage any particular industry segment or group of consumers. Second Report and Order at para. 287.

3. The Commission’s own standards with respect to area code relief require that any such plan strike an “optimal balance” that assures that any new area code plan be implemented in “as evenhanded a way as possible upon all carriers and customers affected by its introduction.”

In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, FCC 95-19, 10 FCC Rcd 4596, para. 35 (January 23, 1995) (“Ameritech Order”).

Just as they failed to document the actual effect of 7-digit intra-NPA dialing on competition, neither AT&T nor CTIA offer any evidence why 10-digit dialing in the 847 area represents a “balance” between carriers and customers. AT&T states that it would not be expensive to implement 10-digit dialing and offers as support for this bald assertion the fact that the Illinois Commerce Commission “has never contended that it would be.” AT&T Comments at 6. AT&T further asserts that the most significant costs associated with 10-digit dialing are the costs to modify telephone switches, without ever mentioning the economic costs to end-users that 10-digit dialing creates. Id.

The People ask that the Commission not leave consumers out of the equation when deciding whether a denial of CUB’s request represents the “optimal balance” which the Commission’s own policy dictates. The very real economic costs of misdialed numbers, the replacement of security systems currently programmed to make only 7-digit calls, and the

reprogramming of alarm systems and other business and safety-related communications networks also represent costs of 10-digit dialing. The Commission should not base its ruling on the Petition only upon the costs to carriers, because to do so would impose “undue disadvantage” to a group of customers, contrary to the Commission’s express policy.

CONCLUSION

WHEREFORE, for all the above reasons, the People of the State of Illinois respectfully request that the Commission grant a permanent waiver of the 10-digit dialing requirement for the 847 and 224 NPAs in the Chicago area.

Respectfully submitted,
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